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June 21, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, Room TW-A325
Washington, D.C. 20554

Re: Matter of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act
of 1996, CC Docket No. 96-128 NSD File No. L-99-34

Dear Ms. Salas:

Please find enclosed for filing an original and four copies
of the "Comments of the RBOC/GTE/SNET Payphone Coalition on
Inmate Payphone Service Proceeding" in the above-captioned
proceeding.

Please date-stamp and return the extra copy provided to the
individual delivering this package.

Sincerely,

Michael K Kellogg/amp

Michael K. Kellogg

Enclosures

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List ABCDE

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Implementation of the Pay Telephone)
Reclassification and Compensation) CC Docket No. 96-128
Provisions of the)
Telecommunications Act of 1996)

**COMMENTS OF THE
RBOC/GTE PAYPHONE COALITION
ON INMATE PAYPHONE SERVICE PROCEEDING**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The RBOC/GTE Payphone Coalition (the "Coalition") hereby responds to the Commission's Public Notice, DA 99-841 (rel. May 6, 1999). The Commission sought comment on two main issues: the propriety of a federally imposed compensation mechanism for inmate service providers; and whether incumbent local exchange carriers have discontinued subsidies and discrimination with respect to their inmate payphone services.

As to the first issue, the Coalition believes that there is no justification for the imposition of an extraordinary inmate payphone compensation element at the federal level.¹ It is possible that state imposed rate ceilings might prevent PSPs in some states from being "fairly compensated" for some of the calls made from inmate payphones in those states. If this is the case, the FCC may appropriately be called upon to preempt those state rate ceilings. The Coalition's experience

¹The Coalition is on record as opposing the \$0.90 rate element previously proposed by some inmate providers. *See* Coalition Opposition to Petitions for Reconsideration at 3 (filed Oct. 28, 1996) (noting that "[s]tate payphone rules will be subject to review at the state level . . . and, absent appropriate action from state authorities, such rules can be brought before the Commission by way of complaint.").

suggests, however, that in many states, regulated rates for inmate calling are adequate to ensure that PSPs receive fair compensation for inmate calls.

In any event, the appropriate procedural mechanism for the examination of any particular state-imposed rate ceiling is a petition for preemption. Indeed, the Commission explicitly endorsed just such a procedure in the *Order on Reconsideration*.² There the Commission stated that “[i]f an inmate provider believes, after making its arguments to a particular state . . . that it is not receiving fair compensation for intrastate toll calls originated by its inmate payphones, it may petition the Commission to review the specific state regulation of which it complains.” *Id.* at 21269, ¶ 72. The Commission should explicitly reaffirm that it has the power to preempt state-imposed rate ceilings pursuant to section 276 and make clear that it will do so in any case where such a rate ceiling deprives inmate service providers of fair compensation for some calls made from their payphones. But it need not take any further action in this proceeding.

As to the Commission’s request for comment concerning subsidies or discrimination in favor of BOC PSPs, the Coalition believes that the Commission’s rules are clear: BOCs are subject to *Computer III* and *ONA* nonstructural safeguards; the Commission has determined that these regulations will “ensure that BOCs do not discriminate or cross-subsidize in their provision of payphone service.” *First Report and Order*,³ 11 FCC Rcd at 20640, ¶ 199; *see also id.* at 20641, ¶ 200 (describing safeguards). These safeguards apply to BOC provision of inmate payphone services just as they do to BOC provision of other payphone services. Pursuant to

²Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233 (1996).


³Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996).

those regulations, all service offerings that the BOCs provide to their inmate payphone operations are available on non-discriminatory terms and conditions to independent payphone operations. No additional Commission rules are required. To the extent that any party believes that it is the victim of unfair discrimination at the hands of any carrier, it may bring a complaint before the appropriate regulatory body. *See, e.g.*, 47 U.S.C. § 208.

CONCLUSION

For the foregoing reasons, the Commission should reaffirm 1) that the Commission, after an appropriate, state-specific proceeding, will preempt a state rate ceiling upon a showing that the ceiling deprives inmate payphone providers of fair compensation for calls made from their payphones; and 2) that BOCs must provide non-discriminatory service to affiliated and independent inmate service providers alike. No further action is required in this proceeding.

Respectfully submitted,



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Counsel for the RBOC/GTE
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June 21, 1999

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of June 1999, I caused one copy of the foregoing "Comments of the RBOC/GTE/SNET Payphone Coalition on Inmate Payphone Service Proceeding" to be served upon the parties listed on the attached service list by first-class mail, postage prepaid.



Aaron M. Panner

Service List

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